Appeal against sentence for importing Class A drugs (Δ8–THC edibles) allowed; sentence reduced as the Royal Court's approach to weight was manifestly excessive—appropriate sentence set at 46 months' imprisonment, treating edibles as single "doses" rather than by total weight.

[2025]GCA090

IN THE GUERNSEY COURT OF APPEAL
(CRIMINAL DIVISION)
Court of Appeal Case No. 535

10th December 2025

Before: Clare Montgomery KC, President;
Roddy Dunlop KC, JA; and
The Rt Hon Dame Julia Macur, JA

Between:

FILIPE SMITH **Appellant**

And

LAW OFFICERS OF THE CROWN **Respondent**

Advocate S E Steel for the Appellant
Crown Advocate J D McVeigh for the Respondent

JUDGMENT

DUNLOP JA:

INTRODUCTION

1. This is the judgment of the Court. It concerns an appeal against sentence, imposed by the Royal Court on 7 February 2025.
2. When arraigned, the Appellant pleaded guilty to two Counts of importing controlled drugs, being the fraudulent evasion of the prohibition of importing them contrary to section 77(1)(b) and (2) of the Customs and Excise (General Provisions) (Bailiwick of Guernsey) Law, 1972, as amended. The first Count related to a cannabinol derivative, Delta–8 tetrahydrocannabinol (Δ8–THC), which is a Class A controlled drug. The second Count related to cannabis, a Class B drug. His co-accused, Corey le Sauvage, had pleaded not guilty to those offences but was convicted after trial, and also pled guilty to a third Count of failing to disclose information under a notice given to him pursuant to the Regulation of Investigatory Powers (Bailiwick of Guernsey) Law, 2003.
3. The Appellant and his co-accused were sentenced as follows:

    1. On Count 1, the Appellant was sentenced to 6½ years' imprisonment, and Mr le Sauvage to 9½ years' imprisonment.

    2. On Count 2, the Appellant was sentenced to 2 years' imprisonment, and Mr le Sauvage to 2½ years' imprisonment, in each case to run concurrently.

3. On Count 3, which applied to Mr le Sauvage alone, he was sentenced to 1 year's imprisonment, to run consecutively.

4. Accordingly, *cumulo* sentences were imposed of 6½ years for the Appellant, and 10½ years for Mr le Sauvage.

5. Mr le Sauvage appealed that sentence, leave having been granted by Sir Richard McMahon, Bailiff, on the basis that the sentence imposed on Count 1 was manifestly excessive. In *Le Sauvage v Law Officers of the Crown* [2025] GCA 066, this Court allowed that appeal, and reduced the sentence to the following:

   Charge 1 – 7 years' imprisonment.

   Charge 2 – 2 years 6 months' imprisonment, concurrent

   Charge 3 – 1 year imprisonment, consecutive

6. In light of the decision of this Court in *le Sauvage,* the Appellant sought leave to appeal out of time. Leave was granted by Sir Richard McMahon, Bailiff. The Appeal relates the Count 1 only.

7. The Crown accepts that the decision of this Court in *le Sauvage* means that the sentence on the Appellant in respect of Count 1 falls to be reconsidered.

8. The controlled substance forming the subject matter of Count 1 was Delta–8 tetrahydrocannabinol (Δ8–THC), a cannabis derivative which is a Class A drug according to the Misuse of Drugs (Bailiwick of Guernsey) Law, 1974. This is different from the situation in the United Kingdom, where such substances are designated as Class B drugs. Of importance in this case is the fact that the controlled substance was contained in "edibles", specifically candy bars which were laced with Δ8–THC.

THE IMPORT OF THE DECISION IN *LE SAUVAGE*

9. In *le Sauvage,* this Court referred to the leading decision on sentencing for drugs offences in Guernsey, being the decision of the Five Judge Court of Appeal Bench in *Richards v Law Officers of the Crown*, 18th April 2002. In that case, in comments which remain apposite, the Court said (at [4]):

   "There appears to us no justification for relaxing the general policy of the courts of this Bailiwick in visiting drug trafficking offenders with condign punishment."

10. As in *le Sauvage,* nothing said herein is intended to detract from that statement of principle. The scourge of illegal drugs is a blight on society. Anyone considering importing drugs to the island should expect to be dealt with severely.

11. In *Richards* the Court said, under the heading of "Purity", as follows:

    "11. ***Where the quantity of a drug is being considered, in assessing the starting point, this should be primarily based on weight***, and only to a lesser extent based on street price. Further, except in cases of very high purity, or where there is reason to believe that the drugs will be cut before being passed on, ***the purity of drugs will not be a factor that will be taken into account in sentencing***."

12. As this Court said in *le Sauvage,* those comments make perfect sense in the context in which they were issued – namely, cases involving importation of drugs in the form of cannabis (resin or herbal), powder or pills. In such cases, purity will only be relevant where very high (as an aggravating factor, given the raised level of harm) or very low (as a mitigating factor, given the lowered level of harm).

13. However, an approach which focuses on weight is inapposite where one is dealing with "edibles". An edible – here, 19 candy bars laced with THC – is not something designed to be "cut", or indeed capable of "cutting" in the relevant sense. Each "edible" can be assumed to be a single "dose", and as such is more readily compared with drugs in pill form, such as MDMA, than drugs in the form of powder or resin. Otherwise, there is a risk that the weight of the delivery mechanism – here, the candy bars – is such as to create a situation in which the levels of controlled substance involved are artificially elevated well beyond the actuality, such that the assessment of harm is distorted. That, in the present case as in that of *le Sauvage*, is what seems to have happened here.

THE SENTENCE IMPOSED ON CHARGE 1

14. In its sentencing remarks, The Royal Court said as follows:

> "We have read very carefully the Reports of Dr Bullock and Mr Baker and the Prosecution's submissions (which were made both in writing and orally) and we have listened very carefully to the oral submissions of counsel. In the end, the point being taken by the Defence Advocates is a narrower one that might appear from the bundle of documents which were supplied to us. The Law does not distinguish between different types of Class A drugs. The starting point is that the edibles are Class A drugs. The learned Judges of Appeal in Richards itself caution the Court against entertaining points about purity unless the purity is very high or there is reason to believe that the drugs will be cut before being passed on, neither of which applies here. Comparisons of potency with other drugs whether in the same Class or a different class, or no class at all are unhelpful. This Court does not encourage arguments about the purity or potency of individual drugs, nor arguments based on the amount of controlled substance in any given product. Nonetheless, we have been referred to the Royal Court case of The Law Officers of the *Crown v Lamb* [2022] GRC 056, which included consideration of a product containing Δ9 THC. The Court on the facts of that particular case did reduce the starting point to take account of the constitution of the particular product in that case. We have also been referred to another case, the case of The Law Officers of the *Crown v Bickley* [2022] GRC 018 in which it was said that the *Richards* guidelines are flexible enough to take account of the different circumstances of any case, and that they provide a set of principles. That is how we are going to approach this case. Taking into account all of that, we are going to take a starting point for the Class A drugs of 9 years…
>
> We will then aggravate that starting point to take account of the Class B offence, which we consider would have had a standalone starting point of 3½ years based on weight…
>
> There are other aggravating factors in relation to the drugs offences, as follows:
>
> 1. concealment of the drugs;
>
> 2. relevant previous convictions of both of you;
>
> 3. poor criminal records, Mr Smith's being more significantly poor than Mr Le Sauvage's;
>
> and
>
> 4. in Mr Le Sauvage's case, the fact that he was subject to a Probation Order.
>
> In the light of all of those aggravating factors and including the Class B offence we revise the starting point for Counts 1 to 12 years and will impose a concurrent sentence in respect of Count 2."

15. The Royal Court has taken a starting point (9 years, ignoring the Charge 2 aggravation) which equates to the middle of the *Richards* guidelines for 20 – 50 grams of Class A drugs in powder

form, or the lower end of the range of such guidelines for 500 – 1000 Class A drugs in tablet form.

16. As in *le Sauvage,* that does not appear to us to be realistic. There is a significant difference between the unlawful importation of, say, 600 Class A drug tablets, and the present case (19 candy bars). The harm implicit in the former is substantially greater.

17. In *le Sauvage,* this Court noted that the Royal Court's Order of 7 February 2025 (admittedly under reference to forfeiture as opposed to length of sentence) records as follows:

> "19 'sweet bars' individually wrapped in grease proof paper and zip-lock bags, ***containing a total of 768.21 grams of Tetrahydrocannabinol***".

18. In *le Sauvage,* it was noted that this was an error. In the present case, we have seen a report from the presiding judge, Judge Fooks, who has explained that this was a transcription error and not taken into account by the Court. We accept that without cavil, and in what follows ignore the inaccurate reference to "a total of 768.21 grams of Tetrahydrocannabinol".

19. Nevertheless, it is apparent here, as it was in *le Sauvage,* that the total weight of the candy bars was 768 grams; that the bars only contained, on average, 0.15% THC; and that the total weight of THC involved was approximately 1.15grams.

20. Here, as there, we consider that once one understands that the very nature of edibles means that they cannot sensibly be compared to drugs in powder form so far as weight is concerned (there is a vast difference, in terms of harm and street value, between 768 grams of pure cocaine and 768 grams of candy bars containing a total 1.15grams of THC), the approach adopted in the Royal Court has led to an outcome which is manifestly excessive. We will thus quash that sentence, and turn to consider the appropriate sentence to impose in its stead.

THE APPROPRIATE SENTENCE

21. It remains the case that the Appellant imported Class A drugs, in a situation where that should lead to "condign punishment". We consider that the present case should – in line with the foregoing – be addressed by treating the candy bars as single "doses", and thus as being most appropriately dealt with under the "tablet form" guidance in *Richards.* 19 candy bars would be at the low end of the starting bracket there set out, and we thus select 7 years as the starting point.

22. In terms of the aggravation in Count 2, we consider that the already high starting point of the first *Richards* bracket means – bearing in mind the low amount of Class A drugs involved in Count 1 – that there is no need to raise the starting point of 7 years further.

23. Thereafter, we find unimpeachable the remaining approach of the Royal Court to the sentences imposed on the Appellant. We see no reason not to apply the same 45% discount applied by the Royal Court for the various mitigating factors found to be present. Applying that approach to a starting point of 7 years means as follows:

> Count 1 – 46 months
>
> Count 2 – 2 years, concurrent

24. We thus quash the sentence imposed by the Royal Court, and impose one of imprisonment of 46 months in total.